

# Simpson Thacher & Bartlett LLP

425 LEXINGTON AVENUE  
NEW YORK, NY 10017-3954

TELEPHONE: +1-212-455-2000  
FACSIMILE +1-212-455-2502

Direct Dial Number  
+1-212-455-2653

E-mail Address  
pgluckow@stblaw.com

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June 14, 2017

Re: *In re LIBOR-Based Financial Instruments Antitrust Litig.*, 11-md-2262 (NRB)

Honorable Naomi Reice Buchwald  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

Dear Judge Buchwald:

We are counsel for JPMorgan<sup>1</sup> in the putative class action brought by the OTC Plaintiffs ("Plaintiffs"). We write on behalf of the remaining Defendants in the OTC Action to request the Court's approval of an agreement between Defendants and OTC Plaintiffs ("Plaintiffs") that permits Defendants to serve a limited sur-rebuttal class certification expert report by July 3, 2017. This agreement will not impact the class certification briefing schedule ordered by the Court (which concludes with Plaintiffs filing reply briefs on August 5, 2017) (ECF No. 1633).

Plaintiffs served the rebuttal expert report of B. Douglas Bernheim, PhD, on May 9, 2017. It is Defendants' position that Prof. Bernheim's report contains new opinions that could have been, but were not, included in Prof. Bernheim's opening expert report served on February 2, 2017 in contravention of Rule 26, which required each of Plaintiffs' opening expert reports to contain "a complete statement of all opinions the witness will express and the basis and reasons for them." Fed. R. Civ. P. 26(a)(2)(B)(i); *see* Fed. R. Civ. P. 37(c)(1) (a court may implement "appropriate" remedies where information is not disclosed as required by Rule 26(a), including permitting sur-rebuttal reports). Plaintiffs dispute this characterization of Prof. Bernheim's report, as it is Plaintiffs' position that his rebuttal report solely rebuts the opinions offered by Defendants' experts. Nonetheless, Plaintiffs consent to Defendants serving a limited sur-rebuttal expert report by July 3, 2017 relating to certain aspects of Prof. Bernheim's expert opinions regarding whether and to what extent changes in

<sup>1</sup> JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.

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LIBOR were “absorbed” into the terms of LIBOR-based instruments, and regarding netting of class members’ damages. Defendants, in turn, agree not to move to strike any portion of Prof. Bernheim’s reports on grounds of timeliness of his opinions.<sup>2</sup> The July 3, 2017 deadline will allow Defendants to serve their sur-rebuttal expert report after the deposition of Prof. Bernheim with respect to his rebuttal report, which is scheduled for June 17, 2017 (July 3, 2017 is also the date by which Defendants must file their class certification opposition papers).

For the foregoing reasons, Defendants respectfully request that the Court approve Defendants’ service of a limited sur-rebuttal class certification expert report by July 3, 2017. The parties are available to discuss this issue at the Court’s convenience.

Respectfully submitted,

/s/ Paul C. Gluckow

Paul C. Gluckow

cc: Counsel of Record (*by ECF only*)

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<sup>2</sup> Plaintiffs have advised Defendants that their consent to the filing of the sur-rebuttal report does not constitute a waiver of Plaintiffs’ right to review and respond to the report as appropriate. Defendants have advised Plaintiffs that they do not concede that Plaintiffs have any rights to address the sur-rebuttal report through further responsive reports and reserve their right to object to any further responsive reports that Plaintiffs wish to submit.